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14 UNITED STATES DISTRICT COURT
15 WESTERN DISTRICT OF WASHINGTON
16 AT SEATTLE

17 UNIVERSAL LIFE CHURCH
18 MONASTERY STOREHOUSE,

19 Plaintiff,

20 v.

21 AMERICAN MARRIAGE
22 MINISTRIES, et al.,

Defendants.

CASE NO. C19-0301RAJ

ORDER

I. INTRODUCTION

Before the court are (1) Defendants Maurice King, Lewis King, Glen Yoshioka, and Dylan Wall (collectively, the “Individual Defendants”¹) and Defendant / Counter-claimant American Marriage Ministries’ (“AMM”) (collectively, “Defendants”) motion for summary judgment on Plaintiff Universal Life Church Monastery Storehouse’s (“ULC Monastery”) claims and AMM’s motion for partial summary judgment on its counterclaims against ULC Monastery (AMM Mot. (Dkt. # 199); *see also* AMM Reply (Dkt. # 221)) and (2) Defendant Maurice King’s motion for summary judgment (King Mot. (Dkt. # 202); *see also* King Reply (Dkt. # 220).) ULC Monastery opposes both motions. (AMM Resp. (Dkt. # 212); King Resp. (Dkt. # 211).)

In this order, the court addresses Defendants’ motions to dismiss ULC Monastery’s claims; the court will address AMM’s motion for partial summary judgment on its counterclaims against ULC Monastery in a subsequent order. The court has reviewed the relevant motions, the submissions in support of and in opposition to the motions, the remainder of the record, and the applicable law. Being fully advised,² the court GRANTS in part and DENIES in part Defendants’ motions to dismiss ULC Monastery’s claims.

¹ On July 13, 2021, the parties stipulated to the voluntary dismissal with prejudice of Defendant Sara White. (7/13/21 Stip. (Dkt. # 223).)

² Defendants request oral argument (*see* AMM Mot. at 1, King Mot. at 1), but the court finds that oral argument would not be helpful to its disposition of the motions, *see* Local Rules W.D. Wash. LCR 7(b)(4).

II. BACKGROUND

AMM and ULC Monastery are competitors in the field of providing online ordinations to individuals who wish to perform marriage ceremonies. Each party accuses the other of misconduct related to its web presence. The court recounts below the factual and procedural background relevant to Defendants' motions to dismiss ULC Monastery's claims.

A. Factual Background

ULC Monastery was founded by George Freeman, its President and Presiding Chaplain, in 2006. (Freeman Decl. (Dkt. # 116) ¶¶ 2-3.) It operates an online marriage ministry; offers free online ordinations; sells proof of ordination so that its ministers can register with the state to perform marriages; and sells paraphernalia for performing religious ceremonies, such as exorcisms, baptisms, weddings, and funerals. (*Id.* ¶ 4; 5/4/20 Cohen Decl. (Dkt. # 75) ¶ 2, Ex. 2 (Dkt. # 78 (sealed)) ("Goschie Dep.") at 20:1-21:7; 4/15/21 Roberts Decl. (Dkt. # 201) ¶ 5, Ex. 3 (excerpts of ULC Monastery's website).) Most of its income comes from sales of proof of ordination and paraphernalia. (*See* 5/4/20 Cohen Decl. ¶ 4, Ex. 3 ("Profit and Loss Statement") at 1.) Mr. Freeman was previously an officer of an entity affiliated with the original Universal Life Church in Modesto, California (the "Modesto ULC"), which had been subject to legal challenges. (*See* 5/3/21 Galletch Decl. (Dkt. # 215) ¶ 3, Ex. 1 ("Freeman Dep.") at 51:4-6). Mr. Freeman founded ULC Monastery as "completely independent" from the Modesto ULC and has "no association with them." (*Id.* at 49:2-50:7; 58:23-59:3.)

1 AMM was founded by Mr. Yoshioka, a former ULC Monastery employee, in
 2 2009. (See <https://www.theamm.org/about>; Freeman Decl. ¶ 5.) It, too, offers free online
 3 ordination for individuals who wish to officiate marriages. Maurice King, Mr. Wall, and
 4 a third employee, Trygve Jones, also left their employment at ULC Monastery to join
 5 AMM. (See Freeman Decl. ¶¶ 6-8.) Maurice King is a member of AMM's board of
 6 directors and its general counsel, and Lewis King is AMM's executive director. (M.
 7 King Decl. (Dkt. # 203) ¶ 2; Galletch Decl. ¶ 7, Ex. 5; L. King Decl. (Dkt. # 200) ¶ 1.)
 8 AMM registered the domain name americanmarriageministries.com in 2009 and used it
 9 as its primary website until it transitioned its primary website to TheAMM.org.
 10 (Yoshioka 30(b)(6) Dep.³ at 119:15-21, 122:14-123:6.) It allowed its registration for
 11 americanmarriageministries.com to lapse on May 20, 2011 and did not renew it. (*Id.* at
 12 123:16-23; *see id.* Ex. 8.) ULC Monastery subsequently registered the
 13 americanmarriageministries.com domain name for its own use in July 2011. (See
 14 Freeman Decl. ¶¶ 11-18.) Although americanmarriageministries.com originally
 15 redirected to ULC Monastery's primary website, TheMonastery.org, ULC Monastery
 16 later published content on that site that, AMM alleges, contained false information about
 17 AMM, including that marriages performed by AMM ministers are not legally valid. (See
 18 *id.* ¶ 18; Am. Ans. (Dkt. # 28) at 16-18, ¶¶ 82-106.)

20 ³ Both parties provide exhibits containing excerpts of Mr. Yoshioka's Federal Rule of
 21 Civil Procedure 30(b)(6) deposition on behalf of AMM. (See 6/16/20 Matesky Decl. (Dkt.
 22 # 115) ¶ 4, Ex. B; 7/21/20 Cohen Decl. (Dkt. # 147) ¶ 20, Ex. 17; 5/3/21 Galletch Decl. ¶ 4, Ex.
 2.) The court cites directly to Mr. Yoshioka's Rule 30(b)(6) deposition for ease of reference.

1 In “mid-to-late 2018,” AMM published two additional websites that include
 2 content relating to ULC Monastery: amm-vs-ulc.com (the “AMM-vs-ULC website”) and
 3 americanmarriagelegal.com (the “AMM Legal website”). (Yoshioka 30(b)(6) Dep. at
 4 69:7-20; L. King 30(b)(6) Dep.⁴ at 131:21-132:8; *see* 5/3/21 Galletch Decl. ¶¶ 8-9, Ex. 6
 5 at 6-13 (printout of AMM-vs-ULC website); *id.* Ex. 7 (printout of AMM Legal website).)

6 The AMM-vs-ULC website states that there are “two major organizations when it
 7 comes to ordination, **American Marriage Ministries** (AMM) and the **Universal Life**
 8 **Church Monastery** (ULC Monastery)” and that its purpose is “to help break down the
 9 major differences between” the two churches. (AMM-vs-ULC website at 7-8 (emphasis
 10 in original); *see also id.* at 8 (stating “we’ve created a side-by-side comparison to help”).)
 11 It states that that the Universal Life Church “has been in and out of the courtroom ever
 12 since” the 1950s; “has had their IRS non-profit status revoked;” and “has been embroiled
 13 in fraud allegations.” (*Id.* at 8-9.) These statements link to other webpages that include
 14 information about court cases involving the Modesto ULC that pre-date the founding of
 15 ULC Monastery. (*See id.*; 5/3/21 Goschie Decl. (Dkt. # 214) ¶¶ 3-5, Exs. 1-5.) ULC
 16 Monastery asserts that because it is separate and distinct from the Modesto ULC, there
 17 can be no dispute that the statements on the AMM-vs-ULC page are not true. (King
 18 Resp. at 4.)

21 ⁴ Both AMM and Maurice King provide exhibits containing excerpts of Lewis King’s
 22 Federal Rule of Civil Procedure 30(b)(6) deposition on behalf of AMM. (Mennemeier Decl.
 (Dkt. # 204) ¶ 8, Ex. B; 5/3/21 Galletch Decl. ¶ 4, Ex. 2) The court cites directly to Lewis King’s
 Rule 30(b)(6) deposition for ease of reference.

1 The AMM Legal website purports to answer “questions about getting ordained
 2 online to perform weddings” and to “provide links to state-specific information that
 3 defines the legal requirements.” (AMM Legal website at 1.) ULC Monastery asserts that
 4 this page contains multiple false and misleading statements, including that AMM is an
 5 “IRS 501(3)(c) Certified Non-Profit Ministry;” and that “[t]here are people who have
 6 millions of dollars selling ordinations” who are “behind that anonymous, and misleading
 7 website that incorrectly states that weddings ‘may not be legally valid.’” (King Resp. at
 8 5; AMM Legal website at 1-2; L. King 30(b)(6) Dep. at 297:6-299:5 (acknowledging this
 9 statement referred to ULC Monastery).)

10 **B. Procedural Background**

11 ULC Monastery filed its initial complaint in this action on March 1, 2019.
 12 (Compl. (Dkt. # 1).) After this court granted in part and denied in part Defendants’
 13 motion to dismiss (6/19/19 Order (Dkt. # 25); *see also* MTD (Dkt. # 7)), ULC Monastery
 14 amended its complaint to assert claims against Defendants for (1) violations of Section
 15 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (2) violation of the Washington Consumer
 16 Protection Act, ch. 19.86 RCW (“WCPA”); and (3) defamation per se. (Am. Compl.
 17 (Dkt. # 27) ¶¶ 34-63.) Defendants answered the amended complaint and AMM asserted
 18 counterclaims against ULC Monastery. (*See* Individual Defs. Ans.’s (Dkt. ## 29-33);
 19 AMM Ans.⁵) AMM asserted counterclaims against ULC Monastery for (1) trademark

21 ⁵ AMM also asserted third-party claims against former Third-Party Defendant Universal
 22 Life Church Monastery Storehouse, Inc. (*See* AMM Ans. at 8, ¶ 3.) AMM subsequently
 voluntarily dismissed these claims. (2/26/21 Not. (Dkt. # 192).)

1 infringement in violation of the Lanham Act, 15 U.S.C. § 1114; (2) cybersquatting in
 2 violation of the Lanham Act, 15 U.S.C. § 1125(d) arising from ULC Monastery's use of
 3 the URL <http://www.americanmarriageministries.com>; (3) false advertising and
 4 commercial disparagement in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
 5 § 1125(a); (4) unfair competition in violation of the WCPA; (5) defamation per se; (6)
 6 trade libel; and (7) trademark infringement under Washington common law. (AMM Ans.
 7 at 18-29, ¶¶ 107-96.)

8 On December 7, 2020, the court granted in part ULC Monastery's motion for
 9 summary judgment on AMM's counterclaims. (12/7/20 Order (Dkt. # 170); *see also*
 10 ULC MSJ Mot. (Dkt. # 114).) The court granted the motion as to AMM's defamation
 11 and Lanham Act cybersquatting claims in their entirety and its state-law trademark, trade
 12 libel, and WCPA claims to the extent they arose out of ULC Monastery's use of the
 13 <http://www.americanmarriageministries.com> URL because these claims were
 14 time-barred. (12/7/20 Order at 13.) The court allowed AMM's remaining Lanham Act
 15 claims and its state-law trademark, trade libel, and WCPA claims to proceed to the extent
 16 they were based on conduct within the applicable limitations periods. (*Id.*)

17 Defendants and Maurice King filed the instant motions for summary judgment on
 18 April 15, 2021. (*See* AMM Mot.; King Mot.)

19 **III. ANALYSIS**

20 Below, the court sets forth the summary judgment standard, then analyzes
 21 Defendants' motions for summary judgment on ULC Monastery's claims.

22 **A. Summary Judgment Standard**

Summary judgment is appropriate if the evidence viewed in the light most favorable to the non-moving party shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

The moving party bears the initial burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the absence of such a dispute in two ways: (1) by producing evidence negating an essential element of the nonmoving party’s case, or (2) by showing that the nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party meets its burden of production, the burden then shifts to the nonmoving party to identify specific facts from which a factfinder could reasonably find in the nonmoving party’s favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250. “The mere existence of a scintilla of evidence in support of the non-moving party’s position is not sufficient.” *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995).

B. Defendants’ Motion for Summary Judgment on ULC Monastery’s Claims

1 ULC's claims for false advertising under § 43(a) of the Lanham Act, violation of
 2 the WCPA, and defamation per se are based on AMM's publication of the AMM-vs-ULC
 3 and AMM Legal websites. (Am. Compl. ¶¶ 34-63.) Defendants assert that the court
 4 must grant summary judgment on these claims because ULC Monastery cannot show that
 5 it suffered cognizable injuries as a result of their actions. (See AMM Mot. at 9-13.)
 6 Defendants do not challenge any other elements of ULC Monastery's claims. (See
 7 *generally id.*) The court considers each of the claims in turn.

8 1. Lanham Act Claim

9 To prevail on its claim for false advertising, ULC Monastery must prove that (1)
 10 Defendants made a false or misleading statement in a commercial advertisement about
 11 their own or another's product, (2) the statement actually deceived or had the tendency to
 12 deceive a substantial segment of its audience, (3) the statement was material, (4)
 13 Defendants caused the statement to enter interstate commerce, and (5) ULC Monastery
 14 has been or is likely to be injured as a result of the statement, either by direct diversion of
 15 sales from itself to Defendants or by a lessening of goodwill associated with ULC
 16 Monastery's products. *Cascade Yarns, Inc. v. Knitting Fever, Inc.*, No. C10-861RSM,
 17 2015 WL 3407882, at *4 (W.D. Wash. May 15, 2015) (citing *Southland Sod Farms v.*
 18 *Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997)). The Lanham Act does not,
 19 however, allow "all factually injured plaintiffs to recover." *Lexmark Int'l, Inc. v. Static*
 20 *Control Components, Inc.*, 572 U.S. 118, 129 (2014); see also *ThermoLife Int'l, LLC v.*
 21 *BPI Sports, LLC*, --- F. App'x ---, 2022 WL 612669, at *2 (9th Cir. Mar. 2, 2021).
 22 Rather, the "zone-of-interests test and the proximate-cause requirement" set forth "the

1 relevant limits on who may sue.” *Lexmark*, 572 U.S. at 134. To come within the
2 Lanham Act’s zone-of-interests for a claim under 15 U.S.C. § 1125(a), ULC Monastery’s
3 injury must be “to a commercial interest in reputation or sales.” *Id.* at 131-32. To satisfy
4 the proximate-cause requirement, ULC Monastery “must show economic or reputational
5 injury flowing directly from the deception wrought by the defendant’s advertising; and
6 that . . . occurs when deception of consumers causes them to withhold trade from the
7 plaintiff.” *Id.* at 133. To survive summary judgment, ULC Monastery must provide
8 “non-speculative evidence of injury attributable to” Defendants’ actions. *See Alexander*
9 *v. Falk*, 828 F. App’x 350, 352-53 (9th Cir. 2020). The Ninth Circuit has “generally
10 held,” however, “that ‘when a plaintiff competes directly with a defendant, a
11 misrepresentation will give rise to a presumed commercial injury that is sufficient to
12 establish standing.’” *ThermoLife Int’l*, 2022 WL 612669, at *2 (quoting
13 *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 827 (9th Cir. 2011)).

14 Defendants argue that the court must dismiss ULC Monastery’s Lanham Act claim
15 because ULC Monastery admits that it “is not requesting the [c]ourt award it an amount”
16 for lost profits, lost income or revenue, loss of goodwill, or injury to its reputation “for
17 any of its causes of action” and cannot, therefore, prove actual injury. (AMM Mot. at 9
18 (quoting 4/15/21 Roberts Decl. ¶ 24, Ex. 22 at 7-8 (ULC Monastery’s responses to
19 Requests for Admissions 83-86)); *see also* AMM Reply at 2-4.) ULC Monastery
20 responds that because this is a false comparative advertising case, commercial injury is
21 presumed and it “need not show actual loss or injury” to be awarded monetary and
22

1 injunctive relief. (AMM Resp. at 9-11 (citing *TrafficSchool.com*, 653 F.3d at 826-27,
2 831).)

3 As a threshold matter, the court disagrees with AMM’s assertion that
4 *TrafficSchool.com*’s presumption of injury was superseded by *Lexmark*, 527 U.S. at 129,
5 and *Alexander*, 828 F. App’x at 352. (See AMM Reply at 4.) Indeed, the Ninth Circuit
6 Court of Appeals continues to cite *TrafficSchool.com* for the principle that injury can be
7 presumed in false comparative advertising cases. See, e.g., *ThermoLife Int’l*, 2022 WL
8 612669, at *2; *Quidel Corp. v. Siemens Med. Solutions, Inc.*, --- F. App’x ---, 2021 WL
9 4622504, at *2 (9th Cir. Oct. 7, 2021) (“‘An award of profits with no proof of harm’ is
10 ‘appropriate in false *comparative* advertising cases, where it’s reasonable to presume that
11 every dollar defendant makes has come directly out of plaintiff’s pocket.’” (quoting
12 *TrafficSchool.com*, 653 F.3d at 831) (emphasis in original)). And although it is true that
13 the Ninth Circuit affirmed the trial court’s grant of summary judgment on the plaintiffs’
14 Lanham Act claims in *Alexander*, that case did not involve false comparative advertising.
15 See *Alexander v. Falk*, Case No. 2:16-cv-02268-MMD-GWF, 2019 WL 3717802, at *5
16 (D. Nev. Aug. 7, 2019) (concluding that the evidence did not support an inference of
17 direct competition between plaintiffs and defendants).

18 In light of the Ninth Circuit’s continued reliance on *TrafficSchool.com*, the court
19 agrees with ULC Monastery that summary judgment is not appropriate on its claim for
20 injunctive relief. In *TrafficSchool.com*, for example, after holding that a presumption of
21 commercial injury was appropriate in that false comparative advertising case, the Ninth
22 Circuit concluded that permanently enjoining the defendants from engaging in deceptive

1 marketing or placing misleading statements on its website was an appropriate remedy.
2 *TrafficSchool.com*, 653 F.3d at 831. The court did not require the plaintiffs to prove an
3 economic injury to prevail on their claim for injunctive relief. *See id.* So too, here,
4 where ULC Monastery alleges false advertising by a direct competitor, ULC Monastery
5 need not provide evidence of economic harm to avoid summary judgment on its
6 injunctive relief claim.

7 The same is not true with respect to ULC Monastery's claims for monetary relief.
8 Although ULC Monastery quotes *Cascade Yarns* for the proposition that a court "has
9 considerable discretion in fashioning appropriate monetary relief based on the totality of
10 the circumstances" (AMM Resp. at 11 (quoting *Cascade Yarns*, 2015 WL 3407882, at
11 *5)), it fails to quote the rest of that sentence, in which the *Cascade Yarns* court warned
12 that it "must ensure that any award constitutes 'compensation' for the plaintiff's losses or
13 defendant's unjust enrichment rather than a 'penalty' for the defendant's conduct,"
14 *Cascade Yarns*, 2015 WL 3407882, at *5. Indeed, the *Cascade Yarns* court made clear
15 that the plaintiff "bears the burden to justify any monetary recovery" of either its
16 damages or the defendant's profits. *Id.* (first citing *Porous Media Corp. v. Pall*
17 *Corp.*, 110 F.3d 1329, 1336 (8th Cir. 1997); and then citing *Badger Meter, Inc. v.*
18 *Grinnell Corp.*, 13 F.3d 1145, 1157 (7th Cir. 1994).) Here, ULC Monastery has not
19 directed the court to any evidence that would support an award of monetary relief on its
20 Lanham Act claim, nor has it cited any case that awarded monetary damages to a plaintiff
21 based only on a presumption of commercial injury. (*See* AMM Resp. at 9-11.)
22 Therefore, the court GRANTS Defendants' motion for summary judgment on ULC

1 Monastery's Lanham Act Section 43(a) claim to the extent it seeks monetary damages.
2 The court DENIES the motion with respect to ULC Monastery's claim for injunctive
3 relief.

4 2. WCPA Claim

5 Under the WCPA, a private plaintiff must prove (1) an unfair or deceptive act or
6 practice; (2) occurring in trade or commerce; (3) that impacts the public interest; (4)
7 causes injury to the plaintiff's business or property; and (5) the injury is causally linked
8 to the unfair or deceptive act. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
9 *Co.*, 719 P.2d 531, 533 (Wash. 1986). The WCPA does not require a plaintiff to prove
10 that it suffered monetary damages—rather, it requires only that the plaintiff establish that
11 it has suffered an injury due to the unfair or deceptive act or practice. *Panag v. Farmers*
12 *Ins. Co. of Wash.*, 204 P.3d 885, 890 (Wash. 2009) (stating that “[i]njury is distinct from
13 damages”)); *Lock v. Am. Family Ins. Co.*, 460 P.3d 683, 694 (Wash. Ct. App. 2020)
14 (noting that nonquantifiable injuries, such as loss of goodwill, suffice). When analyzing
15 the injury element, Washington courts distinguish attorney's fees incurred as a result of
16 an unfair or deceptive act or practice from attorney's fees incurred to institute a WCPA
17 action. *Panag*, 204 P.3d at 902 (holding that the plaintiff's expenses incurred in
18 consulting an attorney regarding the underlying deceptive practice constituted injury
19 under the WCPA); *cf. Lock*, 460 P.3d at 694 (holding that the “inconvenience and cost of
20 prosecuting [the plaintiff's] [W]CPA claim does not support a claim for injury to
21 business or property”). Thus, although expenses incurred in bringing the WCPA claim
22

1 itself are not cognizable, “[i]nvestigation expenses and other costs resulting from a
2 deceptive business practice sufficiently establish injury.” *Panag*, 204 P.3d at 902.

3 Here, Defendants contend that summary judgment is appropriate because ULC
4 Monastery claims as injuries only “litigation expenses and inconvenience”—injuries
5 which, they argue, are not cognizable under the WCPA. (AMM Mot. at 10-11.) ULC
6 Monastery counters that its injuries are “the time of its own personnel and the cost to
7 have an attorney investigate” AMM’s websites. (AMM Resp. at 7 (citing 5/4/20 Cohen
8 Decl. ¶ 13, Ex. 11 at 7 (ULC Monastery’s answer to AMM’s Interrogatory No. 19).) It
9 seeks a monetary award of \$1,044.63 in attorney’s fees incurred in the investigation and
10 injunctive relief. (*Id.*)

11 First, ULC Monastery’s assertion that its attorney was retained only to “investigate
12 [the websites], verify their falsity, and determine the author” is belied by its answers to
13 AMM’s Interrogatories Nos. 3 and 19, in which it stated that it “engaged an attorney to
14 investigate whether the claims on these sites *were legally actionable*” and attributed the
15 \$1,044.63 in fees to that investigation. (AMM Resp. at 7; 4/15/21 Roberts Decl. ¶ 25,
16 Ex. 23 at 16-17 (emphasis added); 5/4/20 Cohen Decl. ¶ 13, Ex. 11 at 7.) Thus, ULC
17 Monastery’s claimed damages are different in character from the attorney’s fees at issue
18 in *Panag*, which were incurred to “dispel uncertainty regarding the nature of an alleged
19 debt” rather than to determine whether the defendant’s conduct was actionable. *See*
20 *Panag*, 204 P.3d at 902. ULC Monastery’s attorney’s fees are not, therefore, an injury to
21 business or property within the meaning of the WCPA.
22

Second, the court agrees with Defendants that the time that ULC Monastery's employee spent reviewing AMM's websites, without more, does not constitute cognizable injury to its business or property. (*See* AMM Reply at 2; 4/15/21 Roberts Decl. ¶ 25, Ex. 23 at 16-17; 5/4/20 Cohen Decl. ¶ 13, Ex. 11 at 7). The cases cited by ULC Monastery make clear that a plaintiff must demonstrate that the lost time negatively affected its business to meet the injury requirement. *See Panag*, 204 P.3d at 899 (finding the plaintiff sufficiently alleged injury where he had to take time away from his business to investigate collection notices, resulting in a loss of business profits); *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 825 P.2d 714, 720 (Wash. Ct. App. 1992) (finding injury to business, even where the injury was not quantifiable, where florist was drawn away from her business and consulting work for several hours per month to address matters relating to her contract); *see also Nordstrom v. Tampourlos*, 733 P.2d 208, 211 (Wash. 1987) (finding injury requirement met where plaintiff alleged loss of goodwill). Here, ULC Monastery has directed the court to no evidence that its business or property were harmed by the inconvenience of having its employee investigate AMM's websites for less than an hour. (*See* AMM Resp. at 7-8.) Accordingly, the court GRANTS Defendants' motion for summary judgment on ULC Monastery's WCPA claim.

3. Defamation Per Se Claim

To establish a defamation claim, the plaintiff must show "(1) that the defendant's statement was false, (2) that the statement was unprivileged, (3) that the defendant was at fault, and (4) that the statement proximately caused damages." *Alpine Indus. Computs., Inc. v. Cowles Pub. Co.*, 57 P.3d 1178, 1183 (Wash. Ct. App. 2002). A statement is

defamatory per se if it “(1) exposes a living person to hatred, contempt, ridicule or obloquy, to deprive him of the benefit of public confidence or social intercourse, or (2) injures him in his business, trade, profession or office.” *Caruso v. Local Union No. 690 of Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am.*, 670 P.2d 240, 245 (Wash. 1983). If the plaintiff shows that the defendant’s statements constituted defamation per se, the court presumes that the plaintiff was damaged, “and the jury, without any further data, is at liberty to assess substantial damages, upon the assumption that the plaintiff’s reputation has been injured and his feelings wounded.” *Canfield v. Clark*, 385 P.3d 156, 162 (Wash. Ct. App. 2016) (quoting *Arnold v. Nat’l Union of Marine Cooks & Stewards*, 265 P.2d 1051, 1054 (Wash. 1954) (internal quotation marks omitted)).

Defendants move only on the damage element of ULC Monastery’s claim; they make no argument, for purposes of this motion, that AMM’s statements were not defamatory per se. (*See* AMM Mot. at 11-12.) They argue that summary judgment is warranted because ULC Monastery “admits [in its discovery responses] that it makes no claim that it suffered injury to its business or reputation after AMM” posted its websites, and thus Defendants have rebutted the presumption of injury. (*See id.* (citing 4/15/21 Roberts Decl. ¶ 25, Ex. 22 at 7-8; 5/4/20 Cohen Decl. ¶ 13, Ex. 11 at 7).) Defendants, however, cite no Washington cases finding that the presumption of injury where a statement is defamatory per se is rebuttable. (*See id.*; *see also* AMM Reply at 4-5.) Furthermore, a jury is free to award nominal damages in a defamation per se case based on its assessment of the harm, if any, suffered by the plaintiff as a result of the

defamatory per se statements. *Maison de France, Ltd. v. Mais Oui!, Inc.*, 108 P.3d 787, 700 (Wash. Ct. App. 2005) (remanding for determination of “presumed damages, either nominal or substantial” where the court had found no economic or other actual damages). Therefore, the court DENIES Defendants’ motion to dismiss ULC Monastery’s defamation per se claim.

C. Maurice King’s Motion for Summary Judgment

Maurice King separately moves for summary judgment on the ground that ULC Monastery cannot meet its burden to produce evidence that, viewed in its favor, would demonstrate that he is personally liable for ULC’s damages, if any, on any of its claims. (*See King Mot.* at 1-8.) He also seeks sanctions for ULC Monastery’s refusal to dismiss him from this case. (*See id.* at 8-9.) Because the court has granted Defendants’ motion for summary judgment on ULC Monastery’s WCPA claim (*see supra* Section III.B.2), the court considers below Maurice King’s liability for ULC Monastery’s Lanham Act and defamation per se claims, then turns to his request for sanctions.

1. Liability

The Lanham Act imposes liability on corporate officers who authorize, direct, or participate in the unlawful acts. *Melwani v. Amazon.com, Inc.*, No. C21-1329RSM, 2022 WL 670919, at *5 (W.D. Wash. Mar. 7, 2022) (citing *Committee for Idaho's High Desert, Inc. v. Yost*, 92 F.3d 814, 823-24 (9th Cir. 1996); and *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 734 (9th Cir. 1999)). “Cases finding personal liability on the part of corporate officers have typically involved instances where the defendant was the ‘guiding spirit’ behind the wrongful conduct, or the ‘central figure’

1 in the challenged corporate activity.” *Id.* (quoting *Facebook, Inc. v. Power Ventures,*
 2 *Inc.*, 844 F.3d 1058, 1069 (9th Cir. 2016)); *see also Deckers Outdoor Corporation v.*
 3 *Bright Trading Corp.*, Case No. LA CV14-00198 JAK (JEMx), 2014 WL 12564124, at
 4 *3 (C.D. Cal. Apr. 28, 2014) (observing that courts find corporate officers liable under
 5 the Lanham Act “when they are a “moving, active conscious force”” behind the
 6 violation).

7 With respect to defamation, Washington courts find officers personally liable for
 8 the torts of a corporation where the officers “either knowingly committed wrongful acts
 9 or directed others to do so knowing the wrongful nature of the requested acts.”
 10 *Annechino v. Worthy*, 290 P.3d 126, 130 (Wash. 2012) (finding corporate officer was not
 11 personally liable for breach of fiduciary duty where he “reviewed and approved of [an]
 12 erroneous account chart” regarding FDIC coverage of bank deposits).

13 ULC Monastery identifies the following evidence of Maurice King’s involvement
 14 with the AMM-vs-ULC and AMM Legal websites.⁶ First, it points to AMM’s response
 15 to its interrogatories, in which AMM stated that:

16 The following individuals were involved in preparing, reviewing, and/or
 17 approving the content of [the websites] in various capacities: Dylan Wall,
 18 Glen Yoshioka, Maurice King, and Lewis King. Lewis King, Glen
 19 Yoshioka, and Dylan Wall collectively wrote the copy for the website[s].
 20 Maurice King reviewed a draft of the website copy. Lewis King approved
 21 the final version of the website copy and authorized and directed its
 22 publication.

21 ⁶ Although ULC Monastery named the Individual Defendants in its complaint, it did not
 22 seek any written discovery from the Individual Defendants, nor did it take any of the Individual
 Defendants’ depositions in their personal capacity. (*See Mennemeier Decl.* ¶ 3.)

(King Resp. at 7 (citing 5/3/21 Galletch Decl. ¶ 16, Ex. 14 at 5-6).) Second, it directs the court to Mr. Yoshioka's testimony in his Rule 30(b)(6) deposition on behalf of AMM. (*Id.* (citing Yoshioka 30(b)(6) Dep. at 81:5-84:25).) Mr. Yoshioka testified that it "was most likely [Mr. Yoshioka], Lewis King, Maurice King, and Dylan Wall" who reviewed the statement on AMM Legal website that "[t]here are people who have made millions of dollars selling ordinations." (Yoshioka 30(b)(6) Dep. at 81:5-84:25.⁷) Third, it points to Lewis King's testimony in his Rule 30(b)(6) deposition on behalf of AMM. (King Resp. at 7 (citing L. King 30(b)(6) Dep. at 107:5-109:24, 128:4-129:4, 296:13-299:8).) In these excerpts, Lewis King testified that Maurice King "probably . . . at some stage" reviewed the content of the AMM Legal website but he could not recall whether that review took place before or after the website went live. (L. King 30(b)(6) at 107:5-108:12.) Lewis King did not recall Maurice King making any objections to the website. (*Id.* at 108:13-109:24.) With respect to the AMM-vs-ULC website, Lewis King did not know whether Maurice King prepared or approved any of its content but believed that he reviewed some of the content. (*Id.* at 128:5-129:4.⁸)

For his part, Maurice King states that he "did not have any involvement in the creation or publication of the statements . . . that [ULC Monastery] alleges are 'false,

⁷ The court agrees with Maurice King that ULC Monastery mischaracterizes Mr. Yoshioka's testimony. (*See* King Resp. at 7 (stating Mr. Yoshioka "testified Maurice King wrote some of the text for the AMM Legal Website").) Indeed, Mr. Yoshioka testified that he did not know who wrote the statement at issue. (*See* Yoshioka 30(b)(6) Dep. at 84:12-25.)

⁸ ULC Monastery states in its response that when asked "what Maurice King did," Lewis King "testified it was 'somewhat confusing.'" (King Resp. at 7 (citing L. King 30(b)(6) Dep. at 296:13-299:8).) The court was unable to find any mention of Maurice King's role being "somewhat confusing" in the cited excerpts.

1 | deceptive, and defamatory” on the AMM-vs-ULC website or the AMM Legal website.
2 | (M. King Decl. ¶ 4.) He further asserts that he “did not write or create any of those
3 | statements;” that he “did not approve those statements for publication”; and that he “did
4 | not authorize or direct that those statements be published on” the websites. (*Id.*)

5 | Here, the court concludes, viewing the evidence in the light most favorable to
6 | ULC Monastery, that a reasonable fact finder could not find that Maurice King had the
7 | requisite level of involvement in the AMM-vs-ULC and AMM Legal websites to justify
8 | personal liability under the Lanham Act or for defamation per se. At best, the evidence
9 | cited by ULC Monastery shows that Maurice King reviewed the content of the websites
10 | at some point before or after they were published, and that he did not object to that
11 | content. Because neither Lewis King nor Mr. Yoshioka knew or could recall whether
12 | Maurice King wrote or approved the content of the websites, the statements in Maurice
13 | King’s declaration that he did not write the content, approve it, or authorize or direct its
14 | publication are uncontroverted.⁹ Thus, the court must conclude that ULC Monastery has
15 | failed to meet its burden to a genuine dispute of material fact that Maurice King was a
16 | “guiding spirit” or “central figure” in the conduct underlying ULC Monastery’s Lanham
17 | Act claim or that he either knowingly committed wrongful acts or directed others to do
18 | so. Accordingly, the court GRANTS Maurice King’s motion for summary judgment
19 | regarding his personal liability for ULC Monastery’s claims.

20 |
21 | ⁹ ULC Monastery’s complaint that AMM’s Rule 30(b)(6) deponents were not prepared
22 | for their depositions is not well-taken. (King Resp. at 7-8.) ULC Monastery did not file any
motions seeking to re-depose these witnesses based on AMM’s alleged failure to prepare them.
(*See generally* Dkt.)

